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16. Appeal and Error (§ 1031 (1)*)—Disregard of Error—Statute.—Under Act March 27, 1914, entitled an act to simplify and expedite the administration of justice by the elimination of useless technicalities and vexatious delays, and providing that the court may at any time, in the furtherance of justice, allow any proceeding or pleading to be amended, and must disregard any error which does not affect the substantial rights of the parties, injury cannot be presumed from the fact of error, but must affirmatively appear from the record.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4038, 4045, 4046.* 1 Va.-W. Va. Enc. Dig. 609.]

Error to Circuit Court of Richmond.

Action by E. K. Vietor & Co. against the Standard Paint Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

O'Flaherty, Fulton & Byrd and *Thos. B. Byrd*, all of Richmond, for plaintiff in error.

Willis B. Smith, of Richmond, for defendant in error.

EWELL v. BROCK.

March 15, 1917. Rehearing denied March 28, 1917.

[91 S. E. 761.]

1. Wills (§ 491*)—Construction—Powers of Court.—Where the will writing is complete in itself and its subject-matter is certain or the facts are ascertained, it is the duty of the court to construe it.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1058* 13 Va.-W. Va. Enc. Dig. 781.]

2. Wills (§ 491*)—Construction—Latent Ambiguity—Questions for Jury.—Where at time of his death testator lived on a 60-acre farm and owned an adjoining 30-acre farm, and devised to his daughter "the farm on which I now live," there was a latent ambiguity, and the question what land was devised is for the jury.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1058.* 7 Va.-W. Va. Enc. Dig. 858.]

3. Appeal and Error (§ 362 (2)*)—Scope of Review—Records—Sufficiency.—A petition for writ of error is a pleading, and must conform to the rules of pleading as to certainty and distinctness of allegation of errors relied on for reversal, or the errors will not be considered.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 1961.* 1 Va.-W. Va. Enc. Dig. 505.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Princess Anne County.

Ejectment by J. L. Ewell against Pinkie E. Brock. Judgment for plaintiff, and defendant brings error. Affirmed.

Thos. W. Shelton, of Norfolk, for plaintiff in error.

R. R. Hicks and *Peechie E. Brock*, both of Norfolk, for defendant in error.

CONRAD *v.* ELLISON-HARVEY CO.

March 15, 1917.

[91 S. E. 763.]

1. Master and Servant (§ 80 (13)*)—Discharge—Action for Salary—Question for Jury.—In a discharged bookkeeper's action on the common counts in assumpsit for salary, whether the plaintiff was discharged or quit the service of defendant of his own accord held for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 121, 122.* 9 Va.-W. Va. Enc. Dig. 665.]

2. Appeal and Error (§ 232 (2)*)—Reservation of Grounds of Review—Issues and Proof.—In view of Code 1904, § 3384, authorizing amendments whenever a variance between pleadings and proof develops during the trial, in a discharged bookkeeper's action for salary, where the declaration contained only the common counts in assumpsit and plaintiff offered in evidence his contract covering his original employment of one year, but defendant at the trial made no objection on the ground of variance between the declaration and proof or upon the insufficiency or the inaptness of the evidence to sustain recovery on the common counts, but his sole objection to the admission of the contract being that it was not then in force, defendant cannot on review successfully contend that plaintiff should have declared especially on his contract and its breach, since parties are not permitted to make one objection to evidence in the trial court and another and different one in the appellate court, but are regarded as having waived all objections save those specifically pointed out.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1430, 1431.* 1 Va.-W. Va. Enc. Dig. 561.]

3. Master and Servant (§ 80 (5)*)—Actions for Wages—Contract of Employment.—The original written contract of employment for one year was admissible to show the terms of the original hiring.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 114.* 9 Va.-W. Va. Enc. Dig. 665.]

4. Master and Servant (§ 80 (1)*)—Discharge—Action for Salary—Pleading.—Where a bookkeeper was employed under a written

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.